

To: Madigan, Andrea[Madigan.Andrea@epa.gov]
From: Schachter, Scott (ENRD)
Sent: Tue 8/11/2015 2:39:09 PM
Subject: Fwd: Navajo Nation To Take Legal Action Over EPA Mine Spill

FYI....

Sent from Scott Schachter's US DOJ iPhone 5s

Begin forwarded message:

From: "Samuels, Stephen (ENRD)" <SSamuels@ENRD.USDOJ.GOV>
Date: August 11, 2015 at 10:34:51 AM EDT
To: "Purdy, Angeline (ENRD)" <APurdy@ENRD.USDOJ.GOV>, "Schachter, Scott (ENRD)" <SSchachter@ENRD.USDOJ.GOV>
Subject: Fwd: Navajo Nation To Take Legal Action Over EPA Mine Spill

Sent from my iPhone

Begin forwarded message:

From: "Augustini, Michael (ENRD)" <MAugustini@ENRD.USDOJ.GOV>
Date: August 11, 2015 at 10:34:05 AM EDT
To: "Samuels, Stephen (ENRD)" <SSamuels@ENRD.USDOJ.GOV>, "Maghamfar, Dustin (ENRD)" <DMaghamfar@ENRD.USDOJ.GOV>, "Martinez, Michael C. (ENRD)" <MMartinez@ENRD.USDOJ.GOV>, "Lynk, Brian (ENRD)" <BLynk@ENRD.USDOJ.GOV>
Subject: Navajo Nation To Take Legal Action Over EPA Mine Spill

Navajo Nation To Take Legal Action Over EPA Mine Spill

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Law360, New York (August 10, 2015, 8:12 PM ET) -- The leader of the Navajo Nation on Saturday said that he plans to pursue legal claims against the U.S. Environmental Protection Agency over a massive spillage of contaminated water into a Colorado river from an EPA-monitored mine.

On Wednesday, EPA workers were supposed to be treating water at the now-defunct Gold King Mine that had been leaking into Cement Creek, a tributary of the Animas River, when material blocking the cave's entry came loose, according to the agency.

Navajo Nation President Russell Begaye told a meeting at the tribe's Shiprock Chapter House on Saturday that the EPA would be held accountable for the spill, as pollutants from the accident moved into the San Juan River from the Animas River and were continuing through the nation's waters.

"The EPA was right in the middle of the disaster and we intend to make sure the Navajo Nation recovers every dollar it spends cleaning up this mess and every dollar it loses as a result of injuries to our precious Navajo natural resources," Begaye said in a statement.

"I have instructed Navajo Nation Department of Justice to take immediate action against the EPA to the fullest extent of the law to protect Navajo families and resources," Begaye added.

The Navajo president called on the EPA to fund an independent lab to perform real-time monitoring of any chemicals from the spill that could make their way into the nation's irrigation or public water systems.

The Shiprock Chapter is one of the largest Navajo farming communities and relies heavily on irrigation from the San Juan River, the nation said. The Navajo EPA will conduct water and sediment quality tests as part of its own investigation into the consequences of the spill, according to the statement.

Begaye called for the federal government to provide tribe members affected by the spill with water for drinking and irrigation as well as hay and feed for livestock.

"We understand cleanup will take decades," Begaye said. "We demand cleanup of this water and the sediments of our affected rivers immediately."

On Friday, Begaye rebuked the federal government for its "lax oversight responsibility" and demanded that the agency provide a list of pollutants that may have made their way into the Animas River after the spill.

The agency said in a statement on Saturday that it had been coordinating on managing the spill with the states of Colorado, New Mexico and Utah, along with the Southern Ute tribe and the Navajo Nation.

The EPA originally estimated that about 1 million gallons of contaminated water had spilled from behind an improvised wall at the mine site, but revised that estimate on Sunday to 3 million gallons.

New Mexico Republican Gov. Susana Martinez declared a state of emergency in response to the spill on Monday after touring the affected area by helicopter.

"I had the chance to see the spill with my own eyes. It is absolutely devastating, and I am heartbroken by this environmental catastrophe," Martinez said in a statement.

Martinez slammed the EPA for its lack of communication and failure to give accurate information on the size of the spill.

"One day, the spill is 1 million gallons. The next, it's 3 million. New Mexicans deserve answers we can rely on," Martinez said.

Representatives for the EPA were not immediately available for comment on Monday.

Dorsey & Whitney LLP partner Thaddeus Lightfoot said in a statement on Monday that the spill creates a serious liability issue for the EPA and its contractor working on the mine.

"Where EPA contractors have made such mistakes in the past, courts have held them liable for any additional remediation required by such actions, despite statutory immunity provisions," Lightfoot said in the statement.

Environmental cleanup contractors are normally not liable for cleanup costs under the Comprehensive Environmental Response, Compensation and Liability Act if they are dealing with pre-existing problems, but aren't immune to suit if they cause a release of contamination already present at a site, according to the statement.

In addition, any immunity such contractors might have only pertains to their liability under federal laws, including CERCLA and the Clean Water Act, Lightfoot said.

"The contractor, therefore, could be liable under state statutes or common law rules even if federal immunity is available," Lightfoot said.

--Additional reporting by Jessica Corso. Editing by Stephen Berg.